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Counsel for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, NORTHERN DIVISION**

RICHARD DUTCHER,

Plaintiff

v.

**BOLD FILMS LP, BOLD FILM
PRODUCTIONS, LLC, OPEN ROAD
FILMS, LLC, and NBC UNIVERSAL
MEDIA, LLC,**

Defendants

**VERIFIED COMPLAINT FOR
INJUNCTIVE AND OTHER RELIEF**

Jury Trial Demanded

Case No.: 2:15-cv-00110-DAK

Judge Dale A. Kimball

Comes now, Richard Dutcher, and alleges the following against defendants Bold Films, Open Road Films, LLC, and NBC Universal, Inc.:

Introduction

1. Richard Dutcher is a noted independent filmmaker who resides in Salt Lake City, Utah. He is one of Utah's leading and most successful filmmakers, and his success as a Utah-based independent filmmaker helped launch the Utah independent film movement. His 2000 movie, *God's Army*, which he wrote, produced, directed, and starred in, grossed more than \$2,700,000 at the box office, and was the second highest grossing film in Utah for that year. Mr. Dutcher wrote, directed, produced, and starred in a number of additional critically acclaimed motion pictures. The first film he made, *Girl Crazy*, was sold to HBO and Cinemax. In 1999, while working on *God's Army*, Mr. Dutcher wrote the screenplay for *Falling*, and in 2007 he made the motion picture. *Falling* is Mr. Dutcher's most personal, and his favorite movie. *Falling* is about a freelance news videographer in Los Angeles. The protagonist spends his time driving on the streets of Los Angeles listening to police band radio for fires, accidents and crimes that he can record and sell. As *Falling* moves toward its climax, he records progressively more violent and distressing scenes until the crucial turning point, when from a hidden location he records a crime in progress that results in a murder in which he continues to record a dying man without rendering assistance. Mr. Dutcher screened the movie in Los Angeles and Salt Lake City, and distributed a small number of DVDs. He planned to release the movie on DVD and Blu-Ray formats in 2015. He also planned to recast the

story and adapt *Falling* for a mass-market release. Defendants are involved in the creation, public performance, and distribution of a 2014 motion picture, *Nightcrawler*, which copies and is derivative of *Falling*, thereby violating Mr. Dutcher's intellectual property rights and depriving Mr. Dutcher of the ability to distribute *Falling* on home video and recast the story for a mass-market.

Jurisdiction and Venue

2. This is an action for copyright infringement arising under the Copyright Act of 1976, as amended, 17 U.S.C. § 101 *et seq.* (the "Copyright Act"). The Court has jurisdiction under 17 U.S.C. § 501 and 28 U.S.C. §§ 1331 and 1338(a).

3. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and 1400 because defendants do business, may be found, and are subject to personal jurisdiction here.

Plaintiff's Motion Picture, *Falling*

4. Plaintiff Richard Dutcher is a critically acclaimed filmmaker who is credited with helping to establish the Utah film industry, and who writes, produces, stars in, and directs many of his motion pictures. He is a citizen of the state of Utah and resides in Salt Lake City.

5. In 1999, while working on the groundbreaking motion picture, *God's Army*, Mr. Dutcher wrote *Falling*. He made the motion picture in 2007, and it received a limited release. *Falling* was well received critically.

6. Mr. Dutcher holds the copyright for *Falling*. He has registered the copyright for the motion picture with the United States Copyright Office. A true and correct copy of the Certificate of Registration for *Falling*, No. PA 1-930-408, is attached as Exhibit 1.

7. Mr. Dutcher has never licensed or otherwise authorized anyone else to copy, distribute, or publicly disseminate *Falling* or make derivative works based upon it.

Defendants' Infringement

8. Upon information and belief, Bold Films LP and Bold Films Productions, LLC (collectively "Bold Films") and is a motion picture production, development, and finance company. Upon information and belief, Dan Gilroy, who has claimed to have written *Nightcrawler* as an original work, assigned his interest and rights (including the registered copyright for *Nightcrawler*) to Bold Films.

9. Upon information and belief, Open Road Films, LLC ("Open Road") is a motion picture distribution company, which distributed *Nightcrawler* to hundreds if not thousands of movie theaters.

10. Upon information and belief, NBC Universal Media, LLC (“NBCUni”), is a mass media company, which has contracted with Open Road and/or Bold Films to release *Nightcrawler* to home video, and caused and contributed to hundreds if not thousands of individual acts of infringement by retailers selling *Nightcrawler* to the general public. NBCUni, Open Road, and Bold Films are collectively referred to as “the defendants.”

11. Mr. Dutcher discovered that *Nightcrawler* infringed on his intellectual property rights and copyright for *Falling*, when he purchased a ticket as a member of the general public and watched *Nightcrawler* at a movie theater. He thereafter sent defendants a cease and desist letter, to no avail. The cease and desist letter is appended herein at Exhibit 2.

12. *Nightcrawler* contains striking similarities with *Falling* that demonstrate conclusively that defendant Bold Films (and/or its assignor, Dan Gilroy) had access to *Falling*.

13. *Nightcrawler* either copies directly the protected elements of *Falling*, or is substantially similar to the protected elements of *Falling*.

14. Any superficial differences between *Falling* and *Nightcrawler* follow from generic differences between the two motion pictures.

15. Upon information and belief, the actual writer of the *Nightcrawler* screenplay (whether it is Dan Gilroy or a ghostwriter) had access to the *Falling* motion picture.

16. The similarities between *Falling* and *Nightcrawler* are so strikingly similar, so as to establish the writer of the *Nightcrawler* screenplay had access to the *Falling* motion picture.

17. There is substantial similarity between the copyrightable expression in the *Falling* motion picture and *Nightcrawler*.

18. *Nightcrawler* is a work that is derivative of the *Falling* motion picture, in violation of Mr. Dutcher's rights under the Copyright Act.

19. Mr. Dutcher has never been asked permission for, and has never consented to, the use, reproduction, or creation of a derivative work based on the *Falling* motion picture. Nor has he ever been asked or agreed to the public display and distribution of a motion picture containing protected elements of *Falling* in any motion picture, or to the use of any of his other exclusive rights in *Falling* under the Copyright Act.

20. Defendants have already infringed Mr. Dutcher's copyright through their unauthorized copying, distribution and public display of the motion picture and home video of *Nightcrawler* and by making an unauthorized derivative work that is based upon copyrightable expression of the *Falling* motion picture.

21. If not enjoined, defendants will continue to infringe on Mr. Dutcher's copyright by continuing to distribute or licensing others to distribute *Nightcrawler* in various formats and distribution channels, and by distributing or licensing derivative works that include the copyrightable elements of *Falling*.

22. Upon information and belief, Bold Films' conduct was at least reckless copyright infringement. Defendants continued infringement (after being provided notice of the infringement) is at the very least reckless copyright infringement in disregard of the rights of Mr. Dutcher.

23. These wrongful acts of defendants have caused irreparable injury to Mr. Dutcher, and unless this Court restrains defendants from further infringement of Mr. Dutcher's copyright, Mr. Dutcher will continue to suffer irreparable injury for which he has no adequate remedy at law.

24. As a direct and proximate result of defendants' wrongful acts, defendants have been and will continue to be unjustly enriched, and Mr. Dutcher has suffered and will continue to suffer damages in an amount not yet fully determined.

WHEREFORE, Mr. Dutcher prays that this Court enter judgment in his favor and against defendants as follows:

A. A preliminary injunction during the pendency of this action and a permanent injunction thereafter enjoining and restraining defendants, their agents,

servants, employees, attorneys, partners, licensees, divisions, affiliates, parent corporations, and all others in active concert or participation with any of them from copying, distributing, publicly displaying, or otherwise making any use of *Nightcrawler*.

B. An award of monetary damages sufficient to compensate Plaintiff for the injuries suffered as a result of defendants' wrongful conduct;

C. An award of defendants' profits and unjust enrichment realized from their infringement;

D. An award to Plaintiff of his costs, and where allowed by law, his reasonable attorneys' fees expended in this action; and

E. An award of such other and further relief as the Court deems just and proper.

Jury Demand

Plaintiff demands trial by jury of all issues so triable.

DATED THIS 19th day of February, 2015.

COVEY & YOUNG, PLLC

/s/ Joseph D. Young
JOSEPH D. YOUNG
Counsel for Plaintiff

VERIFICATION

I declare, under penalty of perjury, that the factual averments contained in the foregoing Verified Complaint for Injunctive and Other Relief are true and correct to the best of my knowledge, information, and belief.

DATED this 17th of February, 2015

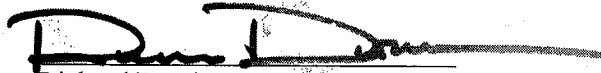

Richard Dutcher

EXHIBIT 1

[Certificate of Registration, United States Register of Copyrights]

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Maria A. Pallante

Register of Copyrights, United States of America

Registration Number

PA 1-930-408

Effective Date of Registration:

February 05, 2015

Title

Title of Work: Falling

Completion/Publication

Year of Completion: 2007

Date of 1st Publication: August 09, 2007

Nation of 1st Publication: United States

Author

• **Author:** Richard Dutcher
Author Created: entire motion picture
Work made for hire: Yes
Citizen of: United States

Copyright Claimant

Copyright Claimant: Richard Dutcher
PO Box 1650, Salt Lake City, UT, 84110, United States

Certification

Name: Stephen Silverman
Date: February 05, 2015

Correspondence: Yes

EXHIBIT 2

[Cease and Desist Correspondence to Bold Films]

LAW OFFICES OF STEPHEN SILVERMAN, PLC

STEPHEN E. SILVERMAN

8901 E. MOUNTAINVIEW RD., STE. 211

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Telephone: (480) 747-0850

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February 11, 2015

VIA FACSIMILE ONLY

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Bold Films
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(323) 769-8954

Elliot Kleinberg
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(310) 571-2278

VIA ELECTRONIC MAIL

Gillian Lusins
NBC Law Department
NBCUniversal
30 Rockefeller Plaza
New York, NY 10009
dcma.agent@nbcuni.com

Re: **Copyright Infringement Claim Against the Motion Picture
*Nightcrawler***

Dear Bold Films, Open Road Films, LLC, and NBCUniversal:

I represent noted independent filmmaker Richard Dutcher. The purpose of this letter is (a) to bring to your attention my client's copyright infringement claim against all who are involved in the creation, public performance, and distribution in all formats of the motion picture entitled *Nightcrawler* and (b) to suggest a way to amicably resolve this dispute without judicial process.

By way of background, my client is the author of the original screenplay entitled *Falling* (©1999) and the director and owner of the copyright registration in *Falling* (©2007), the motion picture based on that screenplay. The motion picture was

Cease and Desist: Nightcrawler
February 11, 2015
Page 2 of 3

publicly shown in Los Angeles and Salt Lake City and copies were also distributed on DVD to film festivals, potential distributors, and some copies were circulated privately.

The protagonist of *Falling* is a freelance news videographer in Los Angeles. He spends his time driving on the streets of Los Angeles listening to police band radio for fires, accidents, and crimes that he can tape and sell, principally to one local news affiliate. As the motion picture moves toward its climax, he films progressively more violent and distressing scenes until the crucial turning point, when from a hidden location he films a crime in progress that results in a murder in which he continues to film a dying man without rendering assistance.

As you can imagine, my client was distressed and outraged when he viewed *Nightcrawler*. The substantial similarities in plot, themes, and—in the words of the Ninth Circuit in *Sid & Marty Krofft Television v. McDonald's Corp.*, 562 F. 2d 1157, 1167 (9th Cir. 1977)—“the total concept and feel” of the motion pictures are striking. While *Nightcrawler* is not an exact copy of *Falling*, there are sufficient similarities to make it, at the very least, a “derivative work” under the Copyright Act.

Because I was somewhat taken aback by what appeared to be a blatant rip-off of my client's motion picture and out of an abundance of caution, I asked a retired theater professor and accomplished playwright to review the two motion pictures. After viewing each of the motion pictures more than once, he reached two conclusions: first, that what he labeled the “substantial similarities” between the two motion pictures meant that “there is no possibility that *Nightcrawler* is an original work,” and second, “that *Nightcrawler* is a derivative of *Falling*.”

Indeed, in addition to the larger similarities between the two works, there are several small details that are striking and provide additional probative evidence of both access and copying. For example, the protagonist in *Falling* is a Mormon who had gone on a church mission in his younger days; the final scene takes place at the Mormon temple in Los Angeles. That same temple appears in *Nightcrawler*. More significantly, in the DVD commentary Dan Gilroy explains that they put Lou into a white shirt to make him look more professional. “It makes him look like a Mormon missionary.”

Cease and Desist: Nightcrawler
February 11, 2015
Page 3 of 3

In short, as I'm sure you know, copyright infringement is shown where there are "articulable similarities between the plot, themes, dialogue, mood, setting, pace, characters, and sequence of events in two works." Such is the case here.

So, too, *Nightcrawler* infringes on Mr. Dutcher's "exclusive right to prepare derivative works based on copyrighted work." A "derivative work" is "a work based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgment, condensation, or any other form in which a work may be **recast, transformed, or adapted.**" 17 U.S.C. § 101. Mr. Dutcher planned to offer his DVD for sale this year, and also planned to recast his story and adapt it for a mass market release. *Nightcrawler* has deprived him of the ability to do either.

This is particularly hurtful to Mr. Dutcher. *Falling* is his most personal as well as his favorite movie. As a result, this infringement is precisely the type that causes irreparable harm and entitles the victim to injunctive relief.

Nevertheless, my client is willing to consider an amicable resolution of this dispute so long as that resolution is prompt and fair. Moreover, he understands that such a resolution would require him to relinquish his right to seek injunctive relief in a court of law.

Accordingly, if your companies have any interest in exploring an amicable resolution of this dispute now, I would urge you to contact me at your earliest convenience. If I have not heard from you by the close of business on February 17, 2015, I will assume you have no interest in settlement and will proceed accordingly.

In the interim, please be assured that the foregoing is not meant to be a full statement of my client's claims, rights, and remedies, all of which are expressly reserved.

LAW OFFICES OF STEPHEN SILVERMAN, PLC



Stephen Silverman

My name is Dr. Eric Samuelsen. I am a former college professor, a critic and a scholar, a playwright and stage director. I have a B.A. from Brigham Young University in Playwriting and in Philosophy, and a Ph. D. from Indiana University in Dramatic Literature and Theatre Theory. I taught at Brigham Young University from 1992-2012, until taking a disability retirement for complications of polymyositis. I am also currently Playwright-in-Residence at Plan B Theatre Company in Salt Lake City, and am a former President of the Association for Mormon Letters. I have published on both theatre history and on film, and I taught a class in dramatic and film structure and analysis that was required for all theatre and film students at BYU, from 1993-2011. I have friends involved with both films that are at the center of this controversy, and have no predisposition towards or against either side. I have been friends with Richard Dutcher since 1999, and with Kevin Rahm, a former student and the actor who played Frank in *Nightcrawler*, since 1993.

I have been asked to compare and contrast two films: *Falling*, a 2008 film written and directed by Richard Dutcher, and *Nightcrawler*, a 2014 film written and directed by Dan Gilroy. I understand from published articles that Mr. Gilroy represents that he came up with the story and wrote the screenplay for *Nightcrawler* as an original work. I was specifically asked to compare the two motion pictures, *Nightcrawler* and *Falling*, and offer my opinion as to whether *Nightcrawler* is an original work, or whether it is a work that is derivative of *Falling*. I have carefully viewed both films several times, and have read the screenplay for *Falling* as well as what is represented to be the screenplay for *Nightcrawler* that was posted on the internet.

As to the first question—is *Nightcrawler* an original work—it is clear that it is not. Given the substantial similarities between the two motion pictures, I believe that there is no possibility that *Nightcrawler* is an original work.

As to the second question, it is my opinion that *Nightcrawler* is derivative of *Falling*. *Falling* and *Nightcrawler* are in many respects mirror images of each other, and use similar story elements throughout. In an Aristotelian sense, *Falling* is structured as a classical tragedy: a story about a protagonist, better than the average, who falls due to a tragic flaw or mistake. *Nightcrawler* is structured as a classical satirical comedy: a story about a protagonist, worse than the average, who rises. (When I describe *Nightcrawler* as a comedy, I mean it in a classical structural sense, not necessarily in the sense of a movie intended to provoke laughter). In short, *Falling* is about a good man who falls. *Nightcrawler* is about a bad man who succeeds.

Thus the differences between the two movies follow from the two ways in which the story is told—*Falling* telling the story as a tragedy, and *Nightcrawler*, as a satirical comedy.

I discuss the substantially similar specific story elements below. But let me stress that the *differences* in the films reflect the intent and purpose for these two archetypes, tragedy and satire. That is to say, tragedy generally deals with issues of profound metaphysical, religious, theological or philosophical import, with questions like 'is there a God, does He care about our lives, what happens after we die, is our world a lost and fallen place and does a better world await us, why do terrible things happen to innocent people, what could possibly redeem us?' Satirical comedy deals with current society, and asks

questions like 'what forces shape our society, what prejudices or predispositions govern us, what use can unscrupulous persons make of our weaknesses, what false religions exist and how can they be recognized, are human beings capable of good, or are we entirely craven, selfish, beings?' The same essential story can be told using either archetype. The story of Socrates' life could be told as a tragedy, as Plato does in his *Phaedo*. Or it could be told as a satire, as Aristophanes does in *The Clouds*. In both cases, it would recognizably be the life of Socrates. And in the case of Aristophanes, we can find extensive borrowings in his play from Plato's earlier work (though, of course, both works have long been in the public domain).

The fact that the two motion pictures have differences is to be expected. The central elements of *Falling's* story, however, are appropriated by *Nightcrawler*. In other words, it is my opinion that *Nightcrawler* is a motion picture that is derivative of *Falling*, and is substantively a retelling of the same story.

In short, *Falling* and *Nightcrawler* use parallel story elements, and to the extent this is to different ends, those ends mirror each other. Let me examine the many similarities between the two motion pictures, in particular by comparing their plots, themes, dialogue, mood, setting, pace, cinematography, characters and the sequence of events.

PLOT, PACE, AND SEQUENCE OF EVENTS

I start with plot and the sequence of events, because those elements are both the most important component of the stories and because the striking similarity between the two motion pictures is readily evident. The main characters in both films work as freelance news videographers. Eric Boyle, the main character in *Falling*, is married, and lives in a run-down section of Los Angeles near Hollywood. Louis Bloom, the main character in *Nightcrawler*, is single, and lives in a tiny apartment in what could be the same part of Los Angeles. At the same time, Eric and Louis seem to be financially struggling; Eric's door has the locks one would expect for someone living in a sketchy neighborhood. We're inclined to like and care about Eric, and dislike and mistrust Lou, reflecting the mirror image purposes for which their stories are employed. In both cases, their jobs are depicted as morally questionable. The difference between them is that Lou likes his job, Eric dislikes his.

They spend their time driving on what I understand to be the same Los Angeles streets listening to police band radio, looking for accidents or crimes they can tape and sell to local news affiliates. Many scenes in both films show the men driving around listening to crime calls on the police radio. I am not personally familiar with the streets of Los Angeles, but I believe that they drive down many of the same streets; at least we see many of the same LA landmarks; the Tower Records store, building walls with painted murals, a Ferris Wheel. We only see Eric driving around during the day (suggesting sunniness and light), and we only see Lou driving around at night (suggesting darkness, he's at home in a world without light).

The films follow substantially similar sequences of events that lead to a virtually identical apex. Each motion picture shows Eric and Lou obtaining news footage that is progressively more graphic and disturbing. Before each motion picture's apex, Eric/Lou obtain progressively more violent and

distressing news footage. Eric starts at a structure fire, in which he focuses on a bleeding fire victim in extreme duress. Eric later watches footage he shot on his television. Eric's next graphic news event is a dead body on the sidewalk, from somebody who jumped from a building. Eric was five minutes late, so he missed the actual suicide. To the viewer of the motion picture, the scene graphically shows a close up shot of the bloodied and broken man. Eric's competitor captured the event, and tells Eric: "[f]ive minutes sooner you could've had the whole enchilada." In the suicide scene, a reporter manipulates the scene by dragging a boy up to the body so she can get a more shocking story.

Lou follows a similar progression, although *Nightcrawler* builds up to the same apex with a couple additional graphic news events. He first drives up to a horrific automobile accident, and watches as a news videographer records two highway patrolmen struggling to pull an unconscious woman from a burning car. Lou then watches news footage of what he saw the night before on his television. After acquiring a camera and a police scanner, Lou first records the police arresting a man who is sitting on the sidewalk in handcuffs while the police are talking to a crying and bloodied teenage boy. Later the same evening, Lou records a minor traffic accident and is chased away by the police, and then arrives at the scene of a carjacking/murder. Filmed in a manner very similar to *Falling's* suicide/jumper scene, Lou arrives to where the police and paramedics are surrounding a dying man. The scene moves toward a close up shot of the man, whose injuries are graphically shown to the viewer of the motion picture. Lou's next graphic news event is a structure fire. Lou arrives late, and is told by a competitor: "ambulance left five minutes ago." Later the same night, Lou arrives at the home of a family whose house has been shot up. Lou sneaks into the house, and rearranges the family photographs on the refrigerator, to place them next to bullet holes, to get a more shocking story. Lou watches his footage on television later in his apartment. Lou's next graphic news event is a fatal automobile accident. Lou arrives before the police and paramedics, and rearranges one of the dead bodies to get a more shocking story. The next graphic news scene is a plane crash to which Lou arrives late and does not get the footage. He is told by a competitor that he recorded the story, and an employee of his recorded a jumper/suicide. Later, Lou sabotages the truck of his competitor, and then films him after a horrific car crash.

The crucial turning points in both stories come when the videographers witness, and tape, people being murdered. In *Falling*, Eric witnesses, and tapes, three gang members as they beat and stab an older man to death. He does not intervene, despite being armed. In *Nightcrawler*, Lou sees a murder in an upscale suburban home, sees the flash of gunfire in the home, then, after the killers depart, enters the home, obtaining graphic footage. Both scenes are taped in similar ways. Eric and Lou both hide in the shadows, creeping forward repeatedly while taping.

This is the central event in both motion pictures. Both motion pictures build to the ultimate horror of the videographers record the final moments of a dying man, instead of rendering aid or comfort. The scenes create the same sense of shock and horror in the viewer of the motion picture. This is the key scene in *Falling*, and with the exception of generic elements immaterial to the substance of motion picture, *Nightcrawler* outright copies *Falling*.

In both films, the taping of a murder has consequences. In *Falling*, the gang members, furious at having their faces shown on television, hunt Eric down, beat up a reporter, kill Eric's boss, Hector, and Eric's wife, Davey, then attack him. In *Nightcrawler*, Lou discovers the identity of the killers, and follows them to a restaurant, where he calls the police, describing them as armed and dangerous, so that he can position himself to tape the arrest attempt and subsequent mayhem. Both Eric and Lou are morally culpable in the deaths of innocent people, Eric by not intervening despite being armed with a gun, and Lou by carefully staging a dangerous arrest attempt, and by deliberately placing Rick, his assistant, in harm's way, resulting in his death.

Both Eric and Lou tape a dying man, without rendering assistance (assistance, which, in both cases, is unlikely to have saved either man). Eric tapes the man assaulted by gang members, who reaches out to him with a bloodied hand as he dies. Lou tapes one of the shooting victims in the home as he takes his last breathes, and Rick's death, as Rick berates him for intentionally placing him in danger. In both films, getting the footage of a man dying is privileged, by the characters, over trying to save their lives.

CHARACTERS

Although Eric and Lou work at identical jobs, they are also unlike other, rival videographers depicted in the two films in this sense: they generally sell their footage to only one client. Eric works for Hector, who is a kind of middle man representing several videographers, but Hector points out that Eric is free to sell to stations himself, directly. Lou, could sell to other stations, but only sells to Nina, news director of one station. Lou's rival, Joe, in *Nightcrawler*, points out the various ways in which Lou is making a mistake selling only to Nina, and Hector tells Eric that he could shop his video around and perhaps make more money.

Although Eric is married and Lou is single, the story in both cases involve the debasement of Eric's/Lou's romantic partner. In both films, a woman is sexually harassed, pressured by men who have financial power over her future and career prospects, to have sexual relations with them. In *Falling*, Davey, Eric's wife, is required to take off her clothes in a film audition (an action she, a Mormon, finds personally humiliating and degrading, given her moral and religious values), and has an affair with the film's casting director. She agrees because she's so desperate to be cast in a low-budget independent film the man is casting. In *Nightcrawler*, Lou pressures Nina to sleep with him, pointing out that her future at the station is in jeopardy, and that the tapes he's provided have been the one thing keeping the station's ratings high enough to prevent her losing her job.

Both films have a character that serve as the moral conscience of Eric/Lou. Eric once had a partner, Luis, recently deceased; one of the first scenes in the film is one in which Eric attends Luis' funeral. Hector tells us that Luis was killed by "a bullet in the fucking head" in West Hollywood. Lou has an assistant, Rick, who is killed by several bullets in the chest. (I am not sufficiently familiar with Los Angeles streets to tell if he is killed in West Hollywood). The similarity between the partnered characters' names seems significant: Eric and Luis, Lou and Rick.

Rick, at times, questions the morality of what he and Lou do professionally. That seems to be his function in the film, to serve as its conscience. We never meet Luis, in *Falling*, but we do meet his wife

Lorena. At Luis' funeral, she corners Eric and urges him to quit. "Promise me, you'll quit," she says to him. "I'll quit," he replies. "When?" she asks, insistently. "Soon," he promises. In other words, though we never meet Luis, Eric's partner, in a sense, Luis' wife serves the same function in the film as Rick does in *Nightcrawler*; the person urging the main character to reassess the morality of their jobs.

As we see the men work, many other similarities emerge. We see both of them duck under yellow police crime scene tape in order to get the footage they seek. They both tape an accident in which a man is trapped underneath a car. When their stories air, it's with identical warnings from on-air news personalities about the graphic nature of the images shown.

An important smaller character in *Nightcrawler* is Frank Kruse, Nina's assistant, who consistently expresses moral objections to the kind of graphic footage Lou provides. In *Falling*, there's a similar dynamic between Linda, a news reporter who competes with Eric for live footage, and her cameraman/assistant, Scottie. This is evident in the suicide scene discussed above. Linda and Scottie show up to a bloody suicide, a man having jumped from a building to his death. When they arrive, the body has already been covered by EMTs. Linda is late to the story. So she finds a child, a little boy, and positions him by the body, then when it's uncovered, she gets Scottie to tape the child's horrified reaction. Scottie's look of moral disapproval echoes similar reactions from Frank to Nina's love for gory images.

Of course, Linda's manipulation of the event's look, moving the child into place for the camera, is something Lou also does. He moves the body from a car crash, so the shot will look better. Lou also rearranges the photos held by magnets to a refrigerator to emphasize the pathos of another, earlier shooting.

DIALOGUE

In an early scene in *Nightcrawler*, Nina describes to Lou what kind of footage they're looking for. She says "The best and clearest way that I can phrase it to you, Lou, to capture the spirit of what we air, is to think of our newscast as a screaming woman running down the street with her throat cut." In *Falling*, we see essentially that; Linda, the reporter, having been savagely beaten by gang members, runs down the street bleeding from several facial wounds.

In *Nightcrawler*, Lou is arrested, and interrogated by police. He says that he thinks the killers figured out who he was and were following him. That's why he called the police and reported them. Essentially, his alibi echoes the most crucial story elements in *Falling*, in which Eric is followed by gang members trying to kill him.

In both films, the videographers talk about how local news affiliates like graphic footages, saying 'if it bleeds, it leads.' Both also talk about their jobs as 'feeding the beast.'

SETTING

Both motion pictures take place in the same section of Los Angeles. Both motion pictures have similar scenes showing famous landmarks around the city to establish it, the city, as a significant location. For

example, both films show the Capitol Records building on Hollywood Blvd, an iconic Los Angeles building. While some of these similarities might be found in any two movies that are set in Los Angeles, it is particularly interesting that *Nightcrawler* opens with a shot of the Los Angeles LDS temple, which it holds for a few moments. This is the same temple shown repeatedly at the end of *Falling*. That temple wouldn't, I think, be an ordinary image people would expect to see in a film set in Los Angeles. And that temple is a crucially important symbol throughout the last third of *Falling*.

Both films had scenes in which the camera turns on the videographer, in which the stringer becomes the story. The first such scene in *Nightcrawler*, is when Joe Loder, Lou's chief rival, is in a serious accident, and Lou gets a closeup of Joe's bloody face as he's being stretchered away. In *Falling*, Eric becomes the subject of a local news story after his wife, Davey, is murdered. He stands on his porch, unable to speak, with dozens of cameras on him.

Both films had significant broken mirror scenes. In *Falling*, Linda, the reporter, stumbles into a public restroom. She doesn't seem to be aware of how badly she's been hurt until she looks into a broken mirror, and can see the extent of her injuries. Then she screams. In *Nightcrawler*, Lou misses on a plane crash story, and Nina chews him out for it. He goes into a restroom, stares into a mirror. Furious, he punches it and it breaks.

MOOD

Mood is the feeling the motion picture creates for the viewer. In both films, the viewer experiences the shock and horror of watching Eric/Lou make the decision to film a dying man instead of helping him. Additionally, the substantially similar graphic presentation of violence and tragedy on the streets of Los Angeles, and its commercialization and exploitation, give a similar feel for the viewers of both films.

VIOLENCE

Both films depict significant acts of violence, but in both cases, the violence escalates in similar ways. In *Falling*, the death of Luis, Eric's partner, is only alluded to; we don't see it. The initial act of violence in *Nightcrawler*, Lou's attack on a security guard, is hardly shown at all; we see Lou begin to attack the man, but then immediately cut to Lou driving away from the scene, putting on the guard's wristwatch. We see the aftermath of violent acts in both films, but don't actually see the violence itself until the endings of both films. Then we close with two specific scenes of violence, which likewise escalate. In *Falling*, we see the street gang attack Linda, the reporter, her kidnapping and brutal beating, and then we see the final fight between Eric and the gang member, which is a graphically violent scene. In *Nightcrawler*, we see a restaurant scene, which includes the shooting of the police officer, which then leads to the final car chase, the killing of Rick and the final demise of the gang member killer.

CINEMATOGRAPHY

In both films, the cinematography seems significantly similar. Both films erect walls between the viewer and the graphic horror of random acts of violence, then, in each, we see the camera go through each of those walls. First, there's the windshield, giving the viewer the same perspective of both Eric and Lou as

each approaches a crime or accident scene. The men then go through the yellow tape, a second barrier, and in both films, as the camera approaches the yellow tape, we switch to hand-held camera shakiness. As Eric or Lou approach the victim, the perspective changes to the viewfinder in the camera. Then the characters break through the final wall, and put the camera literally on top of the victim. Those four levels of cinematic distancing characterize both films' depictions of accident/crime scenes.

DIFFERENCES IN THE MOTION PICTURES LARGELY FOLLOW FROM *NIGHTCRAWLER* RECASTING *FALLING* AS A SATIRICAL COMEDY

The differences between the moral culpability of the two protagonists reflect the differences between tragedy and satire more than anything more substantive. Eric's first instinct, seeing the gang members assault their victim, is to grab his camera. He's a decent man, and the filming of the scene suggests that he's forgotten, in the excitement of the moment, that he has a gun (which has been recently and reluctantly acquired). All the other tragic events that befall him flow from that moment and that mistake. It's both a tragic flaw (ten years on the streets have conditioned him, perhaps even corrupted him, to always think first of getting the story), and a tragic mistake, and it leads directly to his downfall. But it's the kind of mistake we might imagine ourselves, as moral agents, making. We can understand it, forgive it. It's the kind of mistake, in short, that a protagonist makes in a tragedy. Lou's actions are far more egregious. He deliberately sets up a scenario that will result in exciting news footage. But it also endangers innocent civilians in a restaurant, it results in the shooting and near death of a police officer, in a dangerous high speed chase on a public street, in the killing of the two suspects, and in the malicious lie that endangers, and kills, Rick, Lou's assistant. This reflects the values of satire; Lou, a contemptible human being, prospers as a direct result of his reprehensible behavior.

The differences between the films also strike me as significant, in that Eric and Lou are mirror images of each other. In *Falling*, Eric wants to be a filmmaker. He feels that he's been struggling for ten years to make a film that will make a difference, that will be a genuinely moral and artistic success. But his career as a videographer has, in a very real sense, warped him, hurt his commitment to his religious beliefs and values, damaged his ability to write something that reflects his faith. As he drives around, he's haunted by the graphic violence that his job requires that he tape and engage with. A producer who he hopes will back his screenplay says that his screenplay is routinely violent, not unique, not genuinely new and different. As Eric tells his wife, he wishes that he could go back in time to when he was a missionary. As a tragedy, of course, *Falling* is primarily concerned with significant religious and philosophical questions.

Lou, in *Nightcrawler*, is equally obsessed with professional success. Instead of Eric's crisis of faith, Lou's manner of conversation is so laden with business school and self-help jargon that he seems incapable of communicating like a genuine human being. Eric's deep spiritual crisis is mirrored by Lou's amoral superficiality. After selling stolen wire to a metal dealer, he asks the man for a job. The man tells him he won't hire a thief. Rather than being offended, Lou smiles at this, as though genuinely grateful for that insight into the world of business. *Nightcrawler* is structured like a satire, and one of its subjects is the pervasiveness of the jargon of self-help striver success. In addition, in *Nightcrawler*, Lou tells Nina what he's learned about the cynical priorities of local news, about the reasons why local news is so obsessed with stories about crime and violence. Again, this makes sense, because the film is a satire.

In conclusion, having seen both films multiple times, I believe that the similarities between the two films are significant, and unlikely to be coincidental. But the biggest similarity between them is thematic. Both films are built upon the premise that the public's appetite for graphic, violent news footage is corrosive and immoral. Because *Falling* is a tragedy, Eric falls from grace because, in a very real sense, he has been corrupted by the industry in which he makes his living. He is consumed by the violence he photographs. It affects his ability to write screenplays that reflect his deepest moral and religious values. Because *Nightcrawler* is satire, Lou succeeds in the end. Nina, who represents the news business, has become his acolyte and defender. The corrosive immorality of his approach to a job he has come to love has triumphed. Lou embodies the values of violence and cynicism. In other words, the films are thematically similar. Eric's death is caused by the same milieu that Lou uses to rise to financial success. The films preach the same message, but use different archetypal structures to achieve it. The differences between them are a product of the different means which these story elements employ. In essence, it appears as though *Nightcrawler* employed the basic plotline of *Falling* to make a similar statement about American media and personal ethics.

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 Ph.D.

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